

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

76-4111

B

PLS

**United States Court of Appeals
For the Second Circuit**

JORGE ANTONIO MELARA-ESQUIVEL,
Petitioner,

v.

IMMIGRATION & NATURALIZATION SERVICE,
Respondent.

Appendix

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By: MARTIN L. ROTHSTEIN

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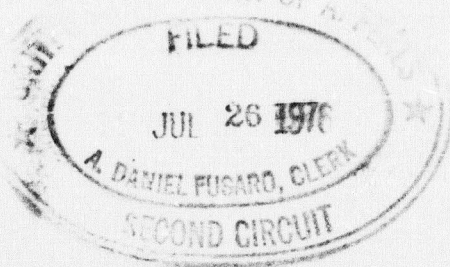


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UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

A-1

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

File No. A19 532 024

In the Matter of MELARA-ESQUIVEL, Jorge Antonio

Respondent.

88 Middle Neck Road, Apt. 1D, Great Neck, N.Y.
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of El Salvador
and a citizen of El Salvador
3. You entered the United States near San Ysidro, California on
or about 1/20/74;
(date)

1. You were not inspected by the United States Immigration and Naturalization Service.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, you entered the United States without inspection.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at 20 W. Broadway, New York, N.Y., 14th floor on April 25, 1975(S) at 8:45 a.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated:

April 7, 1975

Joe D. Howerton

(signature and title of issuing officer)
DEPUTY DISTRICT DIRECTOR
NEW YORK DISTRICT
(city and state)

**APPEAR WITH PASSPORT AND
IMMIGRATION DOCUMENTS**

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-----X
In the Matter :
of :
JORGE ANTONIO MELARA ESQUIVEL, : A19 532 024
Respondent. :
-----X

MOTION FOR SEPARATE SUPPRESSION HEARING
AND SUPPRESSION OF EVIDENCE

Respondent, Jorge Antonio Melara Esquivel, by his Attorney, hereby requests a hearing apart and separate from his deportation hearing to determine the admissibility in evidence against said respondent of all statements, documents, and other proof obtained as a direct or indirect result of the interrogation and detention of respondent on a public street on or about April 7, 1975.

It is hereby requested that all such evidence be suppressed as it was obtained as a result of conduct by immigration officers in excess of the authority contained in Section 287 of the Immigration and Nationality Act, 8 U.S.C. 1357, and in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

It is further requested that the Immigration Service make the arresting officer or officers available as witnesses at the hearing requested.

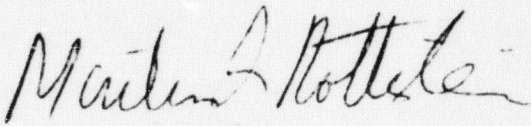
The affidavit of respondent, Jorge Antonio Melara Esquivel is appended hereto in support of this motion.

Direct authority for the relief requested herein, and the procedure sought to be applied is found in Matter of Tsang, Interim Decision 2187, (BIA 1973) and Matter of Tang, Interim Decision 2080 (BIA 1971).

Respectfully submitted,

FRIED, FRAGOMEN & DEL REY, P.C.

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515 Madison Ave.
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Tel. Nc. (212) 688-8555


Martin L. Rothstein

-----X

In the Matter :
of :
JORGE ANTONIO MELARA ESQUIVEL, : A19 532 024
Respondent. :

AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JORGE ANTONIO MELARA ESQUIVEL, being duly sworn,
deposes and says:

1) I am the respondent named in the Order to Show Cause issued on April 7, 1975, with the above-captioned file number. I make this affidavit in support of my request for a separate hearing to determine whether all statements made by me to immigration, and all documents obtained as a result of my arrest should be suppressed.

2) On or about April 7, 1975, at 11:45AM, I was walking on Welwing Road in Great Neck Long Island, New York, on my way to a Luncheonette to eat lunch, when I noticed a man I did not know watching me and apparently waiting for me on the street. I entered the Luncheonette, and the man followed me inside. When I walked out of the luncheonette, the man followed me out and asked me for street directions in English. I answered the man in English, telling him exactly what he wanted to know, and I began to walk away but he blocked my path. At this time he showed me identification indicating that he was an immigration officer, and demanded to know where I was from and whether I had

papers. When I had no papers to show him, he took me to a car, placed handcuffs on my wrists, and after a wait of about three hours, I was taken to 20 West Broadway, where I was questioned and gave a statement concerning my immigration status.

3) At the time that the Immigration Officer questioned and detained me, I was doing nothing unusual, but was walking on a public street as were many other people. I know of no reason why I should have been stopped and questioned, either before or after I gave the officer the directions he asked for.

*Sum to before me the 22
day of April 1955
Martin A. Kelle*
Notary Public, State of New York
No. 6506780 Qualified November 22,
Commission Expires March 22, 1955

Jose Antonio Melara Esquivel

JOSE ANTONIO MELARA ESQUIVEL

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

MATTER OF

FILE A- 19 532 094- N. Y.

Jorge Antonio Melara - Requivel
-Respondent -

IN Deportation PROCEEDINGS
TRANSCRIPT OF HEARING

Before: Aaron I. Maltin, Immigration Judge

Date: April 22, 1973 Place: 90 West Broadway, New York, N.Y.

Transcribed by P. J. Killeen Recorded by IMM - Lanier

Official Interpreter Ester Frankel

Language Spanish

APPEARANCES:

For the Service:

Allen A. Shodor, Esq.
Trial Attorney
New York, N. Y.

Station

For the Respondent:

Martin L. Rothstein, Esq.
of counsel: Fried, Fragonen & Del Rey, P.C.
515 Madison Avenue
New York, N. Y. 10022

1 **EMIGRATION JUDGE TO RESPONDENT (through official interpreter):**

2 **Q** What is your name, sir?

3 **A** Jorge Antonio Melare.

4 **Q** Mr. Melare you have been referred to me today to be given a hearing to
5 determine first if you are deportable and if so, whether there is some way
6 for you to avoid being deported. That is the purpose of the hearing, do
7 you understand?

8 **A** Yes.

9 **Q** Is it your attorney who is here with you now?

10 **A** Yes.

11 **EMIGRATION JUDGE:** Counsel I have here an Order to Show Cause issued on
12 April 7, 1975. Is it acknowledged that you received a copy?

13 **MR. ROSENSTEIN:** Yes, I do, your honor.

14 **EMIGRATION JUDGE:** The order has in it four statements of fact, are these
15 disputed?

16 **MR. ROSENSTEIN:** We do not concede any of the allegations in the Order to
17 Show Cause, your honor.

18 **EMIGRATION JUDGE TO RESPONDENT:**

19 **Q** Mr. Melare, I don't ask you to tell me whether it is correct or not, I
20 merely want to inform you of the nature of the charges against you. The
21 paper that was served on you says that you are illegally in the United States
22 because you crossed the border from Mexico into California on or about
23 January 30, 1974 and you were not inspected and admitted to the United
24 States by a United States Emigration Officer. Do you understand why the
25 government says, in this paper that you are illegally here?

26 **A** YES

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 **IMMIGRATION JUDGE:** Mr. Shader, deportability is contested. You may proceed
2 with your evidence.

3 **MR. ROTHSTEIN:** Your honor may I raise the preliminary matter before the
4 Government begins its case in chief?

5 **IMMIGRATION JUDGE:** Go ahead.

6 **MR. ROTHSTEIN:** We have filed a motion for a separate suppression hearing
7 and for suppression of evidence with the attendant affidavit of the re-
8 spondent seeking to suppress all statements made by him as a result of an
9 arrest, and any evidence or documents which may have been taken from him.
10 I believe that under applicable Board decisions we are entitled to a separate
11 suppression hearing in that we have made a prima facie case of illegality
12 by the sworn affidavit of the respondent. I would therefore request at
13 this time, respectfully, that your honor hold a separate hearing, apart
14 from the deportation hearing, to establish whether or not evidence taken
15 from the respondent, or statements given by him were lawfully obtained, or
16 in the alternative, your honor, issue a protective order that any evidence
17 introduced in connection with the suppression motion may not be used in the
18 Government's case in chief to establish deportability.

19 **IMMIGRATION JUDGE:** Do you have any precedent that I should not incorporate
20 in this record evidence obtained in the course of a suppression hearing?

21 **MR. ROTHSTEIN:** Yes, your honor, I think the primary case on which we rely
22 is Matter of Tang - which was an interim decision, Board of Immigration
23 Appeals number 2080, which was decided in 1971, in which there is a dis-
24 cussion on page 692 of the interim report.....

25 **IMMIGRATION JUDGE:** There is nothing in your affidavit, nor do I know that
26 there is any evidence to be suppressed. What is there to suppress. Tell me,

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 what there is to suppress.

2 MR. ROTHSTEIN: On page 2 of the affidavit I believe, I'll read it....

3 IMMIGRATION JUDGE: No, I have a page two of the affidavit here in front of me..

4 MR. ROTHSTEIN:...it says.....

5 IMMIGRATION JUDGE: There is nothing in his statement that anything was taken
6 from him.....

7 MR. ROTHSTEIN: The statement says after I was taken to 20 West Broadway...
8 where I was questioned and gave a statement concerning my immigration status...

9 IMMIGRATION JUDGE: Well, maybe the government is not going to offer the
10 statement... That's something maybe they are not going to offer..

11 MR. ROTHSTEIN: I raise the motion as a procedural matter . It's part of my
12 request for a suppression hearing. for a separate hearing to be conducted.

13 IMMIGRATION JUDGE: Do you have any documents that you are offering to
14 establish your case at this time, Mr. Shader?

15 MR. SHADER: Yes, I do.

16 IMMIGRATION JUDGE: What evidence do you have?

17 MR. SHADER: Well preliminarily, let me say this. There is no provision in
18 the regulations for a separate suppressive hearing and I don't see on what
19 basis Counsel seeks to....

20 IMMIGRATION JUDGE: I agree, I'm not going to give a separate hearing. It is
21 part of this proceeding, you will have to take your chances that he is
22 legally correct with regard to any statements made , but as for a separate
23 suppression hearing I do not find anything in the regulations that require
24 me to give a separate hearing to the respondent. You may make a motion to
25 suppress when evidence is offered which you believe was unlawfully obtained
26 by improper procedure, but so far it hasn't been yet offered and the case may

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TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

1 very well be resolved without it, so you are perhaps premature, but if and
2 when we reach the point where the government presents some evidence which
3 respondent or his counsel maintains was illegally obtained, we will then discuss
4 the admission of that evidence. You may proceed, Mr. Shader.

5 MR. SHADER TO RESPONDENT (through official interpreter):

6 Q Is it true that you were born in El Salvador?

7 MR. SHADER TO COUNSEL: Counsel, please.

8 MR. ROTHSTEIN: I'm not saying anything, I would like to advise my client
9 of his constitutional rights.

10 IMMIGRATION JUDGE: You certainly may do so. I will go off the record
11 and you advise him of that.

12 IMMIGRATION JUDGE TO RESPONDENT:

13 Q Now that you have spoken with your counsel, what is your answer?

14 A In accordance with my rights under the fifth amendment, I will not
15 answer that question.

16 IMMIGRATION JUDGE: Because your client is unschooled in the law do you
17 say he is claiming that he may incriminate himself by his statements here?

18 MR. ROTHSTEIN: Yes, to remain silent.

19 IMMIGRATION JUDGE: Well this is a civil matter, and you are claiming that
20 his admissions may involve him in a matter of crime, that is the fifth
21 amendment to my understanding.

22 MR. ROTHSTEIN: No, the fifth amendment says that admissions made by him
23 may tend to incriminate him or degrade him. Generally that is the language
24 of the supreme court position.

25 IMMIGRATION JUDGE: Allright, Mr. Shader, then that is the respondent's
26 answer. You may proceed.

MR. SHADER TO RESPONDENT:

Q Do you deny that you were born in El Salvador?

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 MR. ROHSTEIN: Your honor, I think the respondent has indicated that he
2 is invoking the fifth amendment as to these questions.

3 IMMIGRATION JUDGE: If he intends to make that answer to every question,
4 he should do so.

5 MR. FRIEDMAN: Very well.

6 BY RESPONDENT: I decline to answer because of the fifth amendment.

7 MR. SHADER TO RESPONDENT:

8 Q Are you a citizen of El Salvador?

9 A I decline to answer because of the fifth amendment.

10 Q Do you deny that you are a citizen of El Salvador?

11 MR. ROHSTEIN: You have asked that question.

12 MR. SHADER: No, I asked if he was a native of El Salvador, or was he
13 born in El Salvador? Now, I am talking about citizenship.

14 MR. ROHSTEIN: I see.

15 BY RESPONDENT: I decline to answer because of the fifth amendment.

16 MR. SHADER TO RESPONDENT:

17 Q Did you enter the United States on or about January 20, 1974 at San
18 Ysidro, California?

19 A I decline to answer because of the fifth amendment.

20 Q Do you deny that you entered the United States at or near San Ysidro,
21 California on or about January 20, 1974?

22 A I can't I decline to answer under the fifth amendment.

23 Q Is it true that you are not a citizen or national of the United States?

24 A I decline to answer because of the fifth amendment.

25 Q Were you here in the United States prior to January 20, 1974?

26 A I decline to answer because of the 5th amendment.

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BEST COPY AVAILABLE

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q I have here a record of one Jorge Antonio Malara, passport number
2 0168 827 - from El Salvador showing he arrived in the United States at
3 Miami, Florida on January 18, 1971. Does this document relate to you?

4 A I decline to answer under the fifth amendment.

5 Q Do you deny that this record and this Form I-94 relates to you?

6 A I decline to answer under the fifth amendment.

7 MR. SHADER I offer this form I-94 for the record. I show it to Counsel.

8 MR. ROTHSTEIN: No, I would object to it coming into evidence it hasn't
9 been linked with the respondent.

10 IMMIGRATION JUDGE: May I see it.

11 IMMIGRATION JUDGE Well under the rules of evidence as I understand it,
12 there being no denial by the respondent that it does relate to him and
13 it bearing the exact same name as the respondent I shall find it suffi-
14 ciently identical to permit me to receive it in evidence. Your objection
15 is overruled.

16 MR. ROTHSTEIN: I respectfully except.

17 IMMIGRATION JUDGE: Yes, your exception is noted. Form I-94 is marked
18 as Exhibit # 2. You may proceed, Mr. Shader.

19 MR. SHADER TO RESPONDENT:

20 Q Now after that entry in 1971 you were then placed under deportation
21 proceedings and you came before a Special Inquiry Officer. I have here
22 a decision entered by Joseph J. Mack, in the case of Malara, Jorge Antonio,
23 on August 2, 1972. I ask you if this decision relates to you?

24 A I decline to answer under the fifth amendment.

25 Q Do you deny that that relates to you.

26 A I cannot say anything under the fifth amendment.

MR. SHADER:

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TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

1 MR. SHADER: I offer it in evidence.

2 MR. ROTHSTEIN: I object, your honor on the same grounds stated before
3 and also on the ground that the names are different, so even in a case of
4 law this document would be inadmissible.

5 IMMIGRATION JUDGE: I don't see any difference, Jorge Antonio Maleda.

6 MR. ROTHSTEIN: Esquivel is the name shown on the Order to Show Cause
7 concerning this proceeding.

8 IMMIGRATION JUDGE: That's an extension of his name, but Jorge Antonio
9 Maleda is sufficiently identical to satisfy me and your objection is over-
10 ruled. I mark the Form I-39 dated August 2, 1972 as Exhibit # 3.

11 You may proceed, Mr. Shader.

12 MR. SHADER TO RESPONDENT:

13 Q Where do you live?

14 A ---

15 Q In that former proceeding you were served with an Order to Show Cause
16 I show you that Order to Show Cause relating to Jorge Antonio Maleda,
17 and I asked you now if you have been served with this Order to Show
18 Cause?

19 A I decline to answer under the fifth amendment.

20 Q Do you deny that you have been served with a copy of this Order to
21 Show Cause? At that time?

22 A I decline to answer under the fifth amendment.

23 MR. SHADER: I offer this Order to Show Cause for the record. I show it
24 to Counsel.

25 MR. ROTHSTEIN: May I have the same objection for the record, your honor?

26 IMMIGRATION JUDGE: And your objection is overruled and I mark it Exhibit

Four. It is Form I-321 dated July 9, 1972.

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TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

1 MR. SHADER TO RESPONDENT:

2 Q During your 1972 deportation proceedings you had been fingerprinted
3 and you signed your name. I show you this fingerprint chart and ask
4 you if the signature on this fingerprint chart is yours?

5 A I cannot answer under the fifth amendment.

6 Q Do you deny that that is your signature?

7 A I can't answer under the fifth amendment.

8 MR. SHADER: I offer this form, this fingerprint chart for the record.
9 I show it to Counsel.

10 MR. ROYBSTEIN: I would object on the same ground and in the absence of
11 any expert testimony linking these fingerprints to the fingerprints of the
12 respondent.

13 MR. SHADER: We are not offering the fingerprints, we are offering it for the
14 signature and identification by name.

15 MR. ROYBSTEIN: I object to it on the same ground.

16 IMMIGRATION JUDGE: Your objection is overruled. I mark it Exhibit 5,
17 a Form I-437-A, bearing the name of Jorge Antonio Malara.

18 MR. SHADER TO RESPONDENT:

19 Q Now have you previously been represented by an Attorney, Mr. Ira Ehrlich?

20 A I decline to answer under the fifth amendment.

21 Q Prior to the previous deportation proceedings, you had signed a state-
22 ment Jorge Antonio Malara on July 19, 1972. I show this statement or
23 form to you and ask you if you recognize that signature as yours?

24 A I decline under the fifth amendment to answer.

25 Q Do you deny that that is your signature on that form?

26 A I cannot answer under the fifth amendment.

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 MR. SHADER: I offer the statement for the record. I show it to Counsel.

2 MR. ROBINSTEIN: Same objection.

3 IMMIGRATION JUDGE: What is the purpose of this offer, Mr. Shader?

4 MR. SHADER: Well, the purpose is to show very clearly well actually it is
5 cumulative the confession with the whole past proceedings, actually.

6 IMMIGRATION JUDGE: Well, it doesn't establish anything.

7 MR. SHADER: Well I guess not, but it's relative to deportation proceedings
8 and this man was found deportable as an alien....

9 IMMIGRATION JUDGE: Well, as with Counsel's previous objection, his last
10 objection is overruled. I mark Form I-214 Exhibit 7.

11 MR. SHADER: I have here a photostatic copy of a Pan American World
12 Airways ticket. Now when the judge gave you voluntary departure on
13 August 2, 1972 did you depart from the United States/

14 BY RESPONDENT: I decline to answer on the ground of fifth amendment.

15 MR. SHADER TO RESPONDENT:

16 Q Do you deny that you were given permission to depart voluntarily by
17 the Immigration Judge or the Special Inquiry Officer on August 2, 1972?

18 MR. ROBINSTEIN: Your honor, I object o counsel rephrasing questions to
19 which the respondent has already taken the fifth amendment.

20 IMMIGRATION JUDGE: Well he is rephrasing it to be particular and to be
21 cautious in view of your legal position. I can't find objection to this
22 phrasing with an alternate method to be certain he has covered all the
23 bases. Objection is overruled.

24 BY RESPONDENT: I decline to answer under the fifth amendment.

25 MR. SHADER TO RESPONDENT:

26 Q Is it your statement that you never left the United States? since you

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TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

1 entered in 1971?

2 A I decline answering on the fifth amendment.

3 Q Now you were permitted to --- - you have submitted an affidavit
4 executed April 19, 75 signed Jorge Antonio Melara Esquivel which you
5 have signed Jorge Antonio Melara. Is that your signature/

6 MR. ROTHSTEIN: May I confer with my client?

7 MR. SHADER: I would object to counsel's constant interruption this way.
8 I think you have a right to consult with your client and then let me
9 proceed with my examination.

10 MR. ROTHSTEIN: Well, it's not my intention to interfere.

11 MR. SHADER: Respondent has sworn to tell the truth and he is supposed
12 to testify. Now, I shouldn't be interfered with in that manner.

13 MR. ROTHSTEIN: I think in civil proceedings a person being questioned
14 has a right to consult with his attorney anytime regarding his right
15 to answer or not answer the questions being put to him.

16 IMMIGRATION JUDGE: Well, Counsel, you see what might happen, if at each
17 question he must consult counsel, ...

18 MR. ROTHSTEIN: Well I think there's a reason and we are getting into a
19 whole new realm of questioning and I am going to advise my client that
20 it is in his interest to answer questions that are put to him by counsel
21 for the government concerning whether he left the country.

22 IMMIGRATION JUDGE: All right, I will let you consult with him off the
23 record. Off the record,

24 Yes, Counsel?

25 MR. ROTHSTEIN: Off the record the respondent, my client has informed
26 me that he will respond to questions relating to his claim for suppression

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 of evidence. I renew my request at this time your honor for a protective ord
2 order that all testimony elicited in this regard shall not be considered
3 in connection with the government's charge of deportability.

4 IMMIGRATION JUDGE: I find no precedent that you have indicated to me,
5 nor do I know of any rule that requires me to do so and I will not enter
6 such an order. Because the record is clear that we are now proceeding
7 into an area which relates to your claim, so that your rights are
8 protected to that extent.

9 MR. ROSENSTEIN: Thank you your honor.

10 MR. SHADER TO RESPONDENT:

11 Q The question is - is that your signature?

12 A Yes.

13 Q Now according to this affidavit on or about April 7, 1975 at 11:45 a.m.
14 I was walking on Welwing Road in Great Neck Long Island, New York. Is
15 that a correct statement?

16 A Yes.

17 Q Do you live at 11 Welwing Road in Great Neck, Long Island, New York?

18 A Yes.

19 Q And are you employed there?

20 A No.

21 Q Where do you work?

22 A do rooms in the building, cleaning.

23 Q Which building? Spell it?

24 A I think it is spelled Wywood (spelled).

25 Q Where is that?

26 A On Wellwin (spelled) road,

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q Now according to your affidavit, you went to each lunch, right/

2 A Yes.

3 Q And according to your affidavit you went out of the luncheonette and a
4 man followed you out and asked you for street directions in English,
5 is that right?

6 A Yes.

7 Q And you told him exactly what he wanted to know, is that right?

8 A Yes.

9 Q And then you say he showed you identification that he was an
10 Immigration Officer?

11 A No.

12 Q But this is what the affidavit says, sir. I show it to you. Are you
13 now saying that it never happened, that you were lying?

14 A It is correct as it is written, it is just that I am nervous now
15 and I might have made a mistake or so, it would happen when you are
16 nervous like that,

17 Q And you say he demanded to know where I was from, and you told him from
18 El Salvador, and he asked you if you had any papers?

19 A Yes.

20 Q And he asked you for your name, and you told him your name?

21 A Yes.

22 Q Then what happened?

23 A He took me to a car, and he put some handcuffs on me and he took me
24 in his car.

25 Q Did he ask you how you came to the United States?

26 A Yes.

Q And what did you tell him?

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A I came in from Mexico.

2 Q You told him this before you went to the car is that right?

3 A Yes.

4 Q And when did you tell him that you had come through Mexico--withdraw
5 that question. Did you tell him you came through Mexico, what time,
6 and what date?

7 A I told him, a year ago.

8 EMIGRATION JUDGE: Off the record. On the record. The motion for the
9 suppression of evidence, together with the affidavit of the respondent is
10 marked all together in evidence as Exhibit # 7. Anything else, Mr. Shader?

11 MR. SHADER: Yes, if I may.

12 MR. SHADER TO RESPONDENT:

13 Q I have here a ticket, a photocopy of a ticket from Pan American World
14 Airways, from New York to El Salvador in the name of Jorge A. Malera,
15 for departure on December 1, 1972. and I ask you is this a copy of your
16 ticket?

17 A I decline to answer under the fifth amendment.

18 Q Do you deny that this is a copy of your ticket?

19 A I cannot answer under the fifth amendment.

20 MR. SHADER: I offer the ticket in evidence.

21 MR. ROYSTEIN: Same objection, your honor.

22 EMIGRATION JUDGE: Objection is overruled and I mark as Exhibit # 8,
23 the photostatic copy of the Pan American World Airways ticket described.

24 MR. SHADER TO RESPONDENT:

25 Q I have here a letter dated April 4, 1973 by this Service addressed to
26 Jorge Antonio Malera at 1A Avenue Sur # 830, San Salvador, El Salvador.

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TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

1 and the reverse side of this letter it states departed from the United
2 States December 2, 1972 via Pan American and it signed Jorge Antonio
3 Melara E. And there is an address, also in San Salvador there on.

4 I ask you if this is your signature?

5 A I cannot answer under the fifth amendment.

6 Q Do you deny that that is your signature?

7 A I cannot answer under the fifth amendment.

8 MR. SHADER: I offer it in evidence.

9 MR. ROSENSTEIN: Same objection, your honor.

10 IMMIGRATION JUDGE: Objection is overruled. I make it Exhibit # 9, Form
11 G-146.

12 MR. SHADER That is all at this time.

13 IMMIGRATION JUDGE: Yes, counsel?

14 MR. ROSENSTEIN: Yes, at this time, your honor I would like to reinsert my
15 motion to suppress, I would move to suppress all of the statements that were
16 made by the respondent to an immigration officers following his arrest,

17 which were elicited from him orally, by the Trial Attorney. I would
18 also like to move to terminate the proceedings on the ground that all of
19 the evidence that was introduced by the government, although properly
20 obtained, and we are not contending that it was unlawfully obtained, but
21 all such evidence should not properly be linked to this respondent
22 because the presumption of the respondent here at the hearing today and
23 in the offices of the Immigration Services previously was itself the result
24 of what we contend is an unlawful interrogation of respondent on the street.

25 I submit further that the interim decision I cited here on or before
26 Matter of Tang # 2080 establishes that once the respondent has made a
prima facie case with the submission of the affidavit, the burden of

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 proof and the burden of going forward shifts to the government to demon-
2 strate that all evidence offered was lawfully obtained and properly obtained
3 and that the proceeding should not be terminated because the respondent's
4 constitutional rights were not infringed I believe the government has
5 not carried this burden, I felt that we did make a prima facie case
6 through our affidavit and therefore the evidence should be suppressed
7 and the proceedings terminated.

8 **EMIGRATION JUDGE:** The evidence that I have taken into this record will
9 not be suppressed and need not be suppressed and I liked the decision
10 that you quote differently. I do not feel that you have made a proper
11 claim and the government has not offered anything which it obtained
12 from the respondent improperly, so there is nothing to suppress in my
13 view. Therefore your request for termination of proceedings is denied.
14 And I tell you that on the evidence before me, that the government has
15 made out its case of deportability and I now turn to you and ask if there
16 is a selection of a country of deportation in the event such an order
17 entered.....

18 **MR. ROTHSTEIN:** It will be El Salvador, your honor...

19 **EMIGRATION JUDGE:** And is there a request for discretionary relief to
20 avoid an order of deportation?

21 **MR. ROTHSTEIN:** Yes, your honor, we are applying for voluntary departure.
22 The respondent will testify and it is our position that Section 242.17 of
23 the Service's regulations permits the respondent to testify without
24 waiving his rights to remain silent under the fifth without conceding
25 deportability and without having any of the testimony elicited from
26 him in connection with his application be used to establish his deport-
ability.

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 IMMIGRATION JUDGE: Do you have a case to support that position?

2 MR. ROTHSTEIN: No, I believe an expansive interpretation of the regula-
3 tion is justified by the language of the regulation itself.

4 IMMIGRATION JUDGE: Well I will not at this time rule that you are correct,
5 but you proceed at your own peril, but in any event, you are holding to your
6 position. Now you may continue for voluntary departure.

7 MR. ROTHSTEIN: Yes, your honor, and I believe personally that this is a
8 case where the equities are very strong and the respondent is deserving of
9 voluntary departure and I ask the respondent, Mr. Esco--Mr. Esquivel, whether
10 you have ever been arrested by the police anywhere in the world?

11 BY RESPONDENT (through official interpreter):

12 A No.

13 MR. ROTHSTEIN TO RESPONDENT (through official interpreter):

14 Q I ask you whether you have ever been connected in any way with the
15 Communist Party.

16 A No.

17 Q I ask you Mr. Esquivel, if the Immigration Judge grants you the privilege
18 of voluntary departure would you be willing to leave in the time which is
19 set?

20 A Yes.

21 Q Mr. Esquivel, if you are granted voluntary departure, do you have funds
22 to purchase your own ticket to leave the United States?

23 A Yes.

24 Q Where would you purchase a ticket to?

25 A El Salvador.

26 Q Mr. Esquivel, are any members of your family permanent residents of the
United States with green cards?

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TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

1 A Yes. My mother and my brother.

2 Q How many brothers do you have?

3 A Three.

4 Q What are the ages of your brothers you have here?

5 A My youngest brother is 13, my sister is 20 and my other brother is 21.

6 Q And are you the oldest?

7 A Yes.

8 Q How old are you now?

9 A 23.

10 Q And do you have any other members of your family here?

11 A Then, just my family. Just them.

12 Q Is it correct that your whole immediate family is here in the United
13 States?

14 A Yes.

15 Q How did your family obtain their residence in the United States?

16 A My mother obtained it through a contract....

17 BY MR. ROTHESTEIN: Labor certification....

18 Alabor certification, and then she petitioned for my brother.

19 Q Did she also petition for you?

20 A Yes.

21 Q Were you granted a visa by the Consul?

22 A --To come here?

23 Q I will rephrase that - were you granted by the Consul an immigrant visa?

24 MR. SHADER: Ever?

25 MR. ROTHESTEIN TO RESPONDENT:

26 Q ...ever?

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TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

BEST COPY AVAILABLE

1 A I don't understand.

2 MR. ROBINSTEIN: Do you want me to ask him in Spanish?

3 IMMIGRATION JUDGE: No, no. I don't understand the question, Counsel. Is
4 there any claim that he ever got a permanent visa?

5 MR. ROBINSTEIN: No.

6 MR. ROBINSTEIN TO RESPONDENT:

7 Q Do you know why you were not given an immigrant visa with your brothers
8 and sisters?

9 A Yes.

10 Q And what was that reason?

11 A Well, they sent out the visa late, because my birthday is on March 1st,
12 and they sent it out on the 25th of February and they knew that I was in
13 the country. My brothers all got it, but I didn't.

14 IMMIGRATION JUDGE TO RESPONDENT:

15 Q In simple words you didn't get it because you were past 21 years of age,
16 is that correct?

17 A Yes.

18 IMMIGRATION JUDGE: Go ahead, Counsel.

19 MR. ROBINSTEIN TO RESPONDENT:

20 Q How soon before your appointment did you turn 21?

21 A We got it at night.

22 Q Did you at any time go to the Consul before you were 21 to try to.....

23 MR. SHADER: I will object to further testimony along this line...

24 IMMIGRATION JUDGE: Well, Counsel may be trying to elicit sympathy on the
25 basis of the fact that by passage of time he unfortunately did not....

26 Isn't that your claim, Counsel?

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 MR. ROYSTEIN: Yes, I think the record will establish it. D. K.

2 MR. ROYSTEIN TO RESPONDENT:

3 Q When did you last enter the United States?

4 A January 1974.

5 Q And what country did you come from?

6 A El Salvador.

7 Q Were you in the United States prior to this last time you came in?

8 A Yes.

9 Q When did you last leave the United States?

10 A December 2, 72.

11 Q Had you been given voluntary departure by an Immigration Judge at that
12 time?

13 A Yes.

14 Q Until what date did he give you voluntary departure?

15 A Till December 1st.

16 Q Do you know whether you were first given an earlier date, and then
17 obtained an extension of the time to leave?

18 A Yes.

19 Q And who obtained the extension for you?

20 A The lawyer.

21 Q What did the lawyer tell you when he told you the extension had been
22 gotten for you?

23 A I obtained three more months, therefore until December, I got three
24 months and I left in December.

25 Q What was the name of the lawyer who told you that you had the extension?

26 A His name is Ira Ehrlich.

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q You said you had an extension until December 2nd...

2 MR. SHADER: Objection, May I offer this to Counsel. It shows authorized to
3 December 1. Form I-310.

4 MR. ROTHSTEIN TO RESPONDENT:

5 Q Why did you leave on December 2nd if you were supposed to leave on
6 December One?

7 IMMIGRATION JUDGE: I will make the Form I-310 as Exhibit # 10 in the record.
8 And you may proceed with your question.

9 BY RESPONDENT: I missed my plane, and even though I tried to leave on that
10 same day because of that time of year I wasn't able to go until next day.

11 MR. ROTHSTEIN TO RESPONDENT:

12 Q What was your purpose in coming to the United States?

13 A Well, I came because my family is here, and also because my mother is
14 all alone and she needs my help with my brother.

15 Q I would like you to explain to the Judge exactly how you managed to
16 come into the United States?

17 A I took a bus from El Salvador to Mexico, and in Mexico I crossed the
18 border and there there was a car waiting in San Ysidro, which took us to
19 a house and from the house, we went on to Los Angeles, and then I came
20 on to New York, and in New York I called up my mother because she didn't
21 know.

22 MR. ROTHSTEIN: I have no further questions.

23 IMMIGRATION JUDGE: Counsel, you haven't covered one question, you haven't
24 made your request for time.

25 MR. ROTHSTEIN: Your honor, because Congress is now considering several
26 amendments to the Immigration Act which would put the Western Hemisphere

TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

1 on the same basis as the Eastern Hemisphere, so that the respondent would be
2 eligible for second preference, if that is adopted, as the unmarried son of
3 a permanent resident. I respectfully a very long grant of voluntary de-
4 parture of six months, so that, if Congress does amend the law the respondent
5 would be able to benefit from it and take appropriate legal steps so that
6 he may be united with his family. I believe that he is very much suffering
7 from the arbitrariness of the law, if he had^d been born in a country of the
8 Eastern Hemisphere a second preference petition could easily have been
9 filed for him he would have been united with his family. Congress is in
10 the process of correcting the law I believe and I think in the interests of
11 compassion in your honor's discretion that a long period of voluntary de-
12 parture should be granted.

13 **EMIGRATION JUDGE:** However, the question is sir, would he leave in a shorter
14 period or would he abide by your advice and not leave until he decides that
15 he wants to leave, because^{if}/this is not a genuine request to leave then I
16 cannot find that he is ready, willing and able to depart.

17 **MR. ROTHESTEIN:** He will depart whenever he is required to depart, under the
18 law. He certainly has no intention of absconding.

19 **EMIGRATION JUDGE:** I hadn't thought of that either...

20 **MR. ROTHESTEIN:** There is a bona fide intention to depart in whatever time is
21 set by your honor and whatever subsequent extensions that are granted.

22 **EMIGRATION JUDGE:** Well, you can ask for extensions, but I want it settled
23 because this matter has come up previously. If I set a time for him to depart
24 and if extension is denied, does he intend to comply with it, or is he going
25 to pursue what he believes to be legal rights and not depart at all.

26 **MR. ROTHESTEIN:** What I imagine your honor is asking, would we accept as a

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

final order...

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EMIGRATION JUDGE: I didn't say that, I mean I want to know if this is a sincere request to depart within a time that I consider reasonable?

MR. ROSENSTEIN: It is, in my belief it is a sincere request, your honor.

EMIGRATION JUDGE: You may examine on voluntary departure, Mr. Shader and we will recess for lunch, THEN.

MR. SHADER TO RESPONDENT (through official interpreter):

Q Is it your testimony that you were supposed to leave on December 1, 1972 and that some delay ensued and you left the following day? Is that correct?

A Yes.

Q Now, what is the date of your birth?

A 1952, March 1st.

Q How much did you pay in order for you to arrange the crossing by you of the American Mexican border when you last entered United States about January 20, 1974?

A \$500.

Q And was this done at San Ysidro, California, that you entered?

A Yes.

Q Now before this Immigration Judge you appeared in a summary court this morning is that right?

A Yes.

Q And at that time you were offered the grant of voluntary departure in four months, as a final order in this matter, is that correct? You can ask your counsel?

MR. ROSENSTEIN: Such an offer was made.

MR. SHADER: And you felt, or the respondent felt, that you desired to remain

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TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

1 much longer, say six months or more and you did not accept that offer, is
2 that right?

3 MR. ROTHSTEIN: Well, I would say that the offer was not accepted. As to
4 any off the record conversations that were intended to be off the record
5 and as they usually are, I respectfully submit it is not appropriate to
6 now place them on the record by examining counsel as to what was discussed.
7 I would say for respondent and counsel that there were significant legal
8 issues which we wanted to present to the judge.

9 IMMIGRATION JUDGE: Let me understand you Counsel. Was there a period of
10 time that you would accept?

11 MR. ROTHSTEIN: I think traditionally that settlement offers that are off
12 the record are intended to remain off the record...

13 IMMIGRATION JUDGE: The only reason I inquire is that I gather from your
14 approach in this matter that this is not a genuine request for voluntary
15 departure.

16 MR. ROTHSTEIN: Well, I think there is a genuine request now that I have
17 spoken at length to the respondent, and certainly explained to him some of
18 the points of his case which might be very difficult to sustain on appeal
19 as a result of things that came out on the hearing without conceding any
20 of our points, I would submit, regardless of what his position was before
21 the hearing I think there is a very bonafide and sincere desire for volun-
22 tary departure on his part.

23 IMMIGRATION JUDGE: Well, Mr. Shader, are you renewing the offer made
24 previously, sir?

25 MR. SHADER: No, I am not. I am not aware that Counsel would accept any
26 offer of voluntary departure at this time. I am not admitting at this point.

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 I am not making any voluntary departure offer at this point. I call the
2 attention of the Immigration Judge to the fact that technically this respondent
3 may have departed himself...

4 IMMIGRATION JUDGE: Yes, I'm aware of that..

5 MR. SHADER: . . . by departing on December 2, 1972 instead of December 1...

6 IMMIGRATION JUDGE: I am aware of that.

7 MR. ROTHESTEIN: If I may respond to that, there is a very clear case in law
8 that when there is no warrant in existence then.....

9 IMMIGRATION JUDGE: I don't agree with you Counsel. That happens to be distinctly
10 in error. If he left after the time granted to him for voluntary
11 departure he has departed himself, in my estimation. But that need not be
12 decided by me.

13 MR. ROTHESTEIN: Then permission to reapply would be necessary...

14 IMMIGRATION JUDGE: Yes, that's ' right. If he ever seeks readmission again.

15 MR. SHADER TO RESPONDENT:

16 Q If the Judge would grant you voluntary departure at this time would you
17 depart within such time?

18 A If you are offering thirty days, then I would ask for more time. If it
19 is no trouble.

20 Q I am not offering anything. I am asking you if the judge gave you thirty
21 days to leave, would you leave within such time?

22 A Yes.

23 Q What funds do you have?

24 A I have enough.

25 Q Well, how much is enough. How much do you have?

26 A \$500.

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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q How much did you earn for the year 1974?

2 A I wouldn't be able to tell you exactly.

3 Q Well, approximately? Was it two thousand, was it five thousand, was it
4 eight thousand, how much, approximately did you earn in 1974?

5 A Maybe five thousand.

6 Q And what is the name of your employer? I withdraw that question.

7 A ---

8 Q Did you file an income tax return for the year 1974?

9 A Yes.

10 MR. SHADER: That is all at this time.

11 IMMIGRATION JUDGE: Anything else, Counsel?

12 MR. ROTHESTEIN: I have nothing else. I renew my request for voluntary
13 departure, I think although it is an entry without inspection the human
14 equities in this case are as strong as they are in any case.

15 IMMIGRATION JUDGE: However, sir, there is a confusion in this record which
16 I would like to have clarified. Your client is saying that he will leave
17 within thirty days. Yet earlier, you received an offer of four months.
18 Now, can you and your client get together and decide what you really will
19 accept or won't accept, or really want to do?

20 MR. ROTHESTEIN: Well, your honor, ^{if} you are offering us voluntary departure
21 in return for our waiving our right to appeal, I will present that to my
22 client...

23 IMMIGRATION JUDGE: I am not asking you to waive your right to appeal. I
24 just want to know if you want to pursue all of these legal rights or if
25 you will not pursue them and rest on your application. In my mind counsel
26 there is the question of the request for voluntary departure without you
giving up any of your legal rights of appeal if I am in error on any

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TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service

question, or if I am not granting what is required under the law and regulations, that is one matter. But if there is a sincere request to depart because the respondent knows that he is illegally here and acknowledges that and would like to leave voluntarily to preserve his rights to return, that's another matter.

MR. ROTHSTEIN: I think that there is such a sincere request but I don't want to mislead the court by giving the implication that we will not be appealing if voluntary departure is granted because there is a possibility that we will.

IMMIGRATION JUDGE: All right, that's all I wanted to know.

Anything else?

MR. ROTHSTEIN: Nothing else, your honor, except that I would take the position that we feel if respondent is deserving of voluntary departure it should be granted regardless of the fact that we do reserve our right to appeal. I think I have to reserve my right to appeal in order to protect the rights of my client.

IMMIGRATION JUDGE TO RESPONDENT:

Q Incidentally, Mr. Melara, in view of the fact that you filed an income tax recently, do you recall did you claim any dependents, besides yourself?

A No.

IMMIGRATION JUDGE: This is my decision. * * * * *

NOTE: At this point in the proceedings the Immigration Judge delivered his decision in this matter orally on the record. This has been transcribed separately and is attached. * * * * *

IMMIGRATION JUDGE TO RESPONDENT (through official interpreter):

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

Q Do you understand the decision I just made?

A

All right.

IMMIGRATION JUDGE: Counsel?

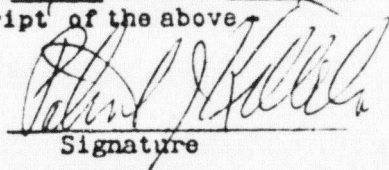
MR. ROTHSTEIN: You know, I think I have stated my position on the record.

IMMIGRATION JUDGE: Do you wish to reserve your right to appeal?

MR. ROTHSTEIN: Of course we reserve our right to appeal.

IMMIGRATION JUDGE: Then you have ten days from today, that is, until the fifth of May, 1975 within which to perfect such an appeal. I will now hand you a set of appeal forms. Hearing closed.

certify that to the best of my knowledge and
the foregoing pages numbered 1 through 27
are a true and accurate transcript of the above
proceedings.


Signature

Title

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File No.: A 19 532 024 - New York

April 25, 1975

In the Matter of:)

JORGE ANTONIO MELARA- ESQUIVEL) In Deportation Proceedings

- Respondent-)

CHARGE: - I&N Act Section 241(a)(2) - entered without inspection

APPLICATION: Voluntary departure.

In Behalf of Respondent:

In Behalf of Service:

Martin L. Rothstein, Esq.,
515 Madison Avenue
New York, N. Y.
(by: Counsel for Fried, Fragonen & Del Rey, Esqs.)

Allan A. Shader, Esq.,
Trial Attorney
New York, N. Y.

ORAL DECISION OF IMMIGRATION JUDGE

The respondent is a 23 year old male alien, a native and citizen of El Salvador. He is charged in the Order to Show Cause with being a native and citizen of El Salvador who entered the United States near San Ysidro, California on or about January 20, 1974 without inspection. He has entered a denial to that charge.

Proof of respondent's identity, citizenship, and immigration history has been presented in the form of documents in the name of Jorge Antonio Melara which establish adequately that such a person is a native and citizen of El Salvador, previously in the United States as a visitor, placed under proceedings, and required to depart and who in fact did depart in December of 1972.

The only evidence with regard to his reentry to the United States and the manner of his entry is contained in the examination with regard to

his application for voluntary departure and counsel maintains that the respondent has testified in that regard only for the limited purpose of obtaining discretionary relief, and then rests upon his prior claim that he was not required to and would not testify pursuant to his rights under the fifth amendment to the constitution on the issue of deportability. My finding as to deportability is therefore based, in order not to muddy the record, solely upon the government's documentation offered in evidence and received by me, which I find to be fully admissible and to relate to the respondent, there being no denial, nor any testimony by him with regard to those documents which would permit me to find that those documents do not relate to him. It therefore follows ~~that~~ Counsel's request for excluding from my consideration in this decision on the issue of deportability, any testimony respondent has given with regard to voluntary departure. I find him therefore deportable as charged in the Order to Show Cause, there being no evidence offered by him in contradiction of the charge in the Order to Show Cause, having remained silent thereon. Pursuant to the provisions of Section 291 of the Immigration and Nationality Act which places upon such person the burden of proof as to the date place and manner of his entry to the United States. By his own legal position he has not offered any evidence on that issue in contradiction of the government's claim. This is not to say that I agree that I must exclude from my consideration any admission or testimony which he allegedly offered solely upon his request for voluntary departure.

There is also before me a request to suppress evidence on the theory that the Immigration Officer who approached respondent and questioned him had no right

to do so and thereby violated his constitutional rights. Hence anything discovered in the course of that examination cannot be used against him. Section 237, which describes the rights of officers of the Immigration Service to interrogate any alien - - or persons believed to be an alien, as to his right to be or to remain in the United States - - amply covers the issue. The defense that anything learned from him must be excluded from the record is specifically rejected. In any event, no documentation now in this record was obtained from the respondent at the time of that interrogation, nor has any been offered to me. All that the government has made use of was the respondent's identification of himself - orally and freely made. The request to suppress evidence was also rejected because the standard of the two cases cited by Counsel - Matter of Tang, 13 I & N Dec, 691 and Matter of Sang, Interim Decision 2187 clearly sustains the position I have taken rather than Counsel's position.

Of course if I were to consider as evidence on the issue of deportability respondent's ^{full} ~~own~~ testimony in the course of this hearing he has frankly admitted that all the facts in the Order to Show Cause are true.

Having found him to be illegally here I next turn to the question of whether he should be granted permission to depart voluntarily from the United States. It is obvious from the legal claims presented and the arguments made that the respondent is not disposed to depart from the United States promptly, if at all. It is clear that he intends to prolong his stay in the United States as long as he can, using whatever means are available to him, legal and

otherwise. Respondent was previously in the United States, as he admitted on examination on the issue of voluntary departure, was granted permission to depart voluntarily, did depart, went back to his own country to obtain a visa but unfortunately could not obtain one and then he paid to have himself smuggled into the United States. While I am not unsympathetic to his desire and I can understand his desire to be with his family, the situation is not unique. There are many other persons in similar situations and he cannot be permitted to determine the law for himself. It has been advanced by Counsel that Congress is now considering a change in the law that would then be beneficial to the respondent, but the respondent has jumped the gun and chosen to take the law into his own hands by paying to be smuggled into the United States in the hope he would remain undetected till perhaps the law was changed and he can legalize his status. To condone his behavior would permit others of a similar nature to do the same.

Prior to the opening of this proceeding he was offered a generous opportunity to depart from the United States within a period of four months and he rejected that opportunity. It is therefore clear that he does not intend to leave within any time that I would grant him, but intends to pursue his alleged legal rights, and in any event, would prefer remaining here until Congress acts this year, next year, or whenever, it does, on the issue mentioned by Counsel. There is therefore no genuine offer meeting the law and regulations that he is ready, willing and has the immediate means with which to depart from the United States as required, and I cannot permit him to prolong his illegal stay in the

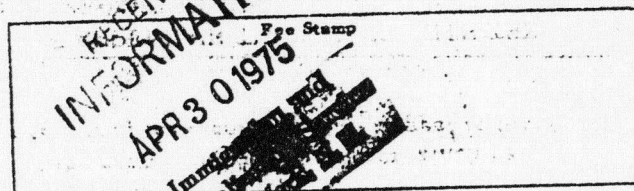
United States by continuous legal claims of little validity. He chose to refuse the generous opportunity offered him by the enforcement arm of the United States Immigration Service, to leave voluntarily, he thereby forfeits further consideration. I find him ineligible for voluntary departure and the grant of voluntary departure ^{I WOULD DENY} is a matter of discretion in any event, unless that request were sincere and prompt. He has chosen El Salvador as the country of deportation.

ORDER: IT IS ORDERED that the respondent be deported from the United States to El Salvador on the charge contained in the Order to Show Cause.

A. I. Malin

AARON I. MALIN
Immigration Judge

OK
 NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS
 SUBMIT IN TRIPLICATE TO:
 IMMIGRATION AND NATURALIZATION SERVICE



In the Matter of:

JORGE ANTONIO ^{M/LARA} ESQUIVEL

File No. A 19 532 024

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated April 25, 1975, in the above entitled case.

2. Briefly, state reasons for this appeal.

1. Respondent's Motion To Suppress, with Respondent's sworn affidavit appended thereto created a prima facie case of an improper interrogation on a public street in excess of the authority contained in section 287 of the Act, and shifted the burden of proof to the Government. The Government failed to establish that the interrogation and arrest were proper.

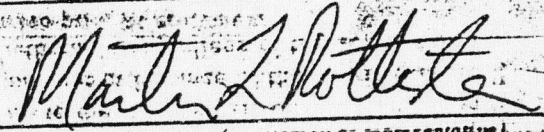
2. The Government wrongfully declined to make the arresting officer available at the hearing, despite the filing of a written motion supported by affidavit requesting the officer's presence.

3. The Immigration Judge abused his discretion in denying voluntary departure based on: a) The refusal of respondent's Counsel to abandon the right of appeal; b) The fact that respondent had declined an off the record settlement offer.

Request 3 weeks time to file brief after receipt of transcripts.

3. I DO ^(do) ^(do not) desire oral argument before the Board of Immigration Appeals in Washington, D. C.

4. I AM ^(am) ^(am not) filing a separate written brief or statement.


 Signature of Appellant (or attorney or representative)

Martin L. Rothstein
 (Print or type name)

FRIED, FRAGOMEN & DEL REY, P.C.
 515 Madison Avenue, N.Y. 10022
 Address (Number, Street, City, State, Zip Code)

April 28, 1975
 Date

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE



United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

MAR 26 1976

File: A19 532 024 - New York

In re: JORGE ANTONIO MELARA-ESQUIVEL

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Austin Fragomen, Esquire
Fried, Fragomen & Del Ray, P.C.
515 Madison Avenue
New York, New York 10022

ON BEHALF OF I&N SERVICE: George Indelicato
Appellate Trial Attorney

ORAL ARGUMENT: September 10, 1975

CHARGES:

Order: Sec. 241(a)(2), I&N Act (8 U.S.C. 1251
(a)(2)) - Entered without inspection

APPLICATION: Termination of proceedings; or, in the
alternative, voluntary departure

This is an appeal from the April 25, 1975 decision of an immigration judge finding the respondent deportable as charged, and denying his request for the privilege of voluntary departure on the ground that he was both ineligible for, and undeserving of, an exercise of discretion in his behalf. The appeal will be dismissed.

After identifying himself by name, admitting that he had received a copy of the Order to Show Cause, and stating that he understood the meaning of the Immigration

A19 532 024

tion and Naturalization Service's allegations, the respondent refused to testify as to his alienage or deportability, asserting the privilege against self-incrimination of the Fifth Amendment to the United States Constitution, and putting the Service to its proof of the allegations in the Order to Show Cause.

On appeal counsel for the respondent contends that (1) all evidence introduced by the Service should have been suppressed as the fruit of an illegal interrogation and arrest; (2) the Government wrongfully failed to make the arresting officer available at the hearing; and (3) the immigration judge abused his discretion by denying voluntary departure because of (a) the refusal of respondent's counsel to abandon the right of appeal, and (b) the fact that respondent had declined an off-the-record settlement offer.

At the deportation proceeding the Service introduced into evidence, over the objections of counsel for the respondent, a Form I-94 pertaining to the respondent, the decision of an immigration judge in a prior deportation proceeding of which the respondent was the subject, the Order to Show Cause pertaining to that proceeding, and two signatures of the respondent. All of these documents came from Service files and were not obtained from the respondent. The immigration judge overruled counsel's objections on the ground that the respondent's name appeared on all of the documents and that he did not deny that they related to him.

At this point counsel for the respondent moved to suppress all of the foregoing evidence on the ground that it had been obtained as a result of conduct by immigration officers in excess of their authority under section 287 of the Immigration and Nationality Act and in violation of the Fourth and Fifth Amendments to the Constitution of the United States. A separate hearing on this question was requested. The motion also contained a request that the Service make the ar-

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resting officer or officers available as witnesses at the suppression hearing. In the alternative counsel requested a protective order to prevent testimony in regard to the motion to suppress from being considered with regard to the issue of deportability.

In his affidavit submitted along with the motion, the respondent asserted that the immigration officer had no basis for a reasonable suspicion that the respondent was an alien, and therefore that the officer had no reason or right to question him. According to the respondent, he was doing nothing to call attention to himself when the immigration officer stopped him, but was merely walking on a public street. He entered and left a luncheonette and then was approached by a man (the immigration officer) who had been watching him and who had followed him into and out of the luncheonette. The man asked directions to a certain place, and the respondent told him how to get to that place. It was then that the man identified himself as an immigration officer and began to interrogate the respondent regarding his right to be in the United States. The immigration judge denied the motion for a separate hearing on suppression of evidence and for a protective order, and the respondent testified concerning his arrest.

The Service introduced an airline ticket for a flight to San Salvador, El Salvador on December 1, 1972, and a letter from the Service showing an extension of voluntary departure through December 1, 1972 with a response by the respondent confirming departure from the United States on December 2, 1972. These documents too came from Service files and not from the respondent as the result of his interrogation and arrest. Counsel then renewed his motion to suppress all statements made by the respondent to immigration officers following his arrest because no evidence other than that obtained directly or indirectly from the respondent as the result of an unlawful interrogation was linked with the respondent. The immigration judge again denied the motion to suppress.

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Service officers have a right to interrogate a person believed to be an alien as to his right to be in the United States. Section 287(a), Immigration and Nationality Act; 8 C.F.R. 287.1(a). They do not need probable cause to make such an inquiry. Matter of Feron-Lopez, Interim Decision 2132 (BIA 1972). We need not decide the issue raised by counsel in reliance on United States v. Brignoni-Fence, 422 U.S. 873 (1975), and Illinois Migrant Council v. Pilliod, 398 F. Supp. 882 (N.D. Ill. 1975), concerning whether or not the immigration officer had a reasonable suspicion that the respondent was an alien, upon which to predicate stopping and questioning the respondent, because we base our conclusion that the respondent is deportable on evidence not obtained as a result of that questioning.

The record before us does not show what reason the immigration officer had for questioning the respondent. However, assuming, arguendo, that the evidence obtained from the respondent as a result of the interrogation was inadmissible because the investigation exceeded the bounds of reasonableness, the Service is not precluded from using information obtained from its official records. Matter of Yau, Interim Decision 2272 (BIA 1974).

The Service has introduced substantial evidence from its files to show that the respondent is an alien, was previously held in deportation proceedings and found deportable, departed from the United States, and has now returned to the United States. The Service did not rely upon any statement taken or any evidence seized at the time of the respondent's arrest to establish deportability.

The contention that the physical presence of an alien is "evidence" that may be suppressed as the "fruit of the poisonous tree" if the alien was illegally arrested

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was flatly rejected by the court in Guzman-Flores v. INS, 496 F.2d 1245 (7 Cir. 1974), and to our knowledge has no judicial support. See also Matter of Burges & Burges-Godey, Interim Decision 2375 (BIA 1970).

The documents introduced by the Service, and the failure of the respondent to sustain his burden under section 291 of the Act to show the time, place, and manner of his entry into the United States, constitute clear, convincing, and unequivocal evidence of the respondent's deportability as charged.

The respondent applied for voluntary departure and testified on behalf of his application. His counsel declared that nothing the respondent would say should be considered a concession of alienage or deportability. The immigration judge reached his conclusion that the respondent was deportable as charged before the application for voluntary departure was made. (Tr. p. 15.)

We agree with the immigration judge that voluntary departure should be denied. The respondent had previously violated the immigration law by overstaying his visitor's visa and was found deportable. He was given a grant of voluntary departure, departed, and then re-entered unlawfully. He testified in support of his application for voluntary departure that he had paid \$500 to someone and was smuggled into this country across the Mexican border. These facts amply justify a refusal to exercise discretion in his behalf. Gil v. Del Guercio, 246 F.2d 553 (9 Cir.), cert. denied 355 U.S. 863 (1957); Tupac Yupanqui-Marin v. INS, 447 F.2d 603 (7 Cir. 1971); Matter of Rojas, Interim Decision 2444 (BIA 1975); Matter of M-, 4 I&M Dec. 626 (BIA 1952). We cannot condone his repeated flouting of the immigration laws of this country. It goes without saying that a grant of voluntary departure must not be conditioned on a waiver of the right to appeal.

For the foregoing reasons, the appeal will be dismissed.

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ORDER: The appeal is dismissed.

Chairman

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT-----X
JORGE ANTONIO MELARA-ESQUIVEL :
(A19 532 024)

Petitioner :

PETITION FOR REVIEW

- against - :

U.S. IMMIGRATION & NATURALIZATION :
SERVICE

Respondent :

-----X

JORGE ANTONIO MELARA ESQUIVEL, by his attorneys, respectfully petitions this Court for review of the order of the Board of Immigration Appeals dated March 26, 1976 affirming the decision of the Immigration Judge dated April 25, 1975, ordering him deported.

FRIED, FRAGOMEN & DEL REY, P.C.
515 Madison Avenue
New York, N. Y. 10022
(212) 688-8555

Dated: July 24, 1976
New York, New York

BY: _____
Martin L. Rothstein

WHERE 'S WHAT

Sources of Information for
Federal Investigators

Prepared by:
Harry J. Murphy, Office of Security
CENTRAL INTELLIGENCE AGENCY

Under a Brookings Institution
Federal Executive Fellowship

DECLASSIFIED

personnel check the references and the cash position of the applicant and the headquarters in Washington keeps a central file which notes any irregularities in performance.

The Director of the Office of Geography of the Department of the Interior is Executive Secretary of the Board on Geographic Names as they relate to foreign geographic names (names of places not in the United States, its territories, or the Commonwealth of Puerto Rico, or adjacent waters). The topographic division of Geological Survey of the Department of the Interior maintains the records of domestic geographic names and resolves problems of accuracy and propriety of name usage.

In 1960 the U.S. Bureau of the Census reported 523,591 Indians in the U.S. and 28,637 Eskimos and Aleuts in the State of Alaska. There is no standard definition for an Indian, and tribal requirements for membership vary; however, one is arbitrarily considered an Indian if he has 25 percent or more Indian blood. In 1964, 360,000 Indians received some form of service from the Bureau of Indian Affairs (BIA). The tribal rolls of Indian tribes are maintained at the field offices of the BIA located at Aberdeen, S. D.; Anadarko, Okla.; Billings, Mont.; Gallup, New Mexico; Juneau, Alaska; Muskogee, Okla.; Minneapolis, Phoenix, Portland and Sacramento. The tribal roll contains date of birth, enrollment number, census number, degree of Indian blood, names of parents, and whether parents are living or deceased. Since 1956 the Bureau of Indian Affairs has operated an Adult Vocational Training program and an Employment Assistance program. At the area office of BIA there may be considerable information on participants in these programs. All applicants receive the General Aptitude Test Battery and are given personal interviews. The employment security agencies of the various States conduct the preliminary screening of applicants and the administration of the GATB.

CHAPTER 17

THE DEPARTMENT OF JUSTICE

In the Department of Justice, two elements contain a tremendous amount of information of value to the personnel security investigator: the Federal Bureau of Investigation and the Immigration and Naturalization Service.

The Federal Bureau of Investigation has over 51 million cards in its main index at FBI headquarters as well as field office records covering cases of interest to the FBI. The Identification Division has over 177 million fingerprint cards on file. The Immigration and Naturalization Service has recorded data on nonimmigrants, immigrants, naturalized citizens and some native-born citizens. The Foreign Agents Registration Section has records of individuals and principal officers of companies representing foreign governments and agencies. The Office of Alien Property Custodian has information on property taken over by the U.S. Government during times of emergency and the individual and corporate claimants of this property. The Records Administration Office of the Administrative Division keeps the files on all actions handled by the various divisions of the Department.

A. Federal Bureau of Investigation

1. Organization of Index and Files

Subject matter and names of individuals and organizations are indexed at FBI headquarters in alphabetical order. The total number of index cards

Tennessee	Director Bureau of Criminal Identification Department of Safety Cordell Hull Office Building Nashville, Tennessee 37219
Texas	Chief Bureau of Identification and Records State Department of Public Safety Box 4143, North Austin Station Austin, Texas 78751
Utah	Director State Bureau of Criminal Identification 301 State Office Building Salt Lake City, Utah 84114
Vermont	Superintendent Bureau of Identification Department of Public Safety Redstone, Montpelier, Vermont 05602
West Virginia	Superintendent State Police Charleston, West Virginia 25305
Wyoming	Director Wyoming Bureau of Identification Capitol Building Cheyenne, Wyoming 82001

Federal investigative agencies interested in acquiring detailed information on fingerprinting may obtain a copy of the booklet, *Fingerprint Identification*—a 1965 publication of the FBI. The inside of the back cover gives the following statistics. As of May 1, 1965, the total number of fingerprints in the possession of the FBI was 174,567,450 broken down as follows:

Personal identification	5,676,436
Aliens and prisoners of war	13,191,345
Criminals and suspects	47,336,158
Government services, including military	54,682,951
Miscellaneous applicants (including defense and industry)	53,680,560

4. The National Academy

For many years the FBI has operated the National Academy, Quantico, Virginia, where a course is given for the benefit of police officers from the United States and foreign countries. A Federal investigator who has an inquiry about someone who attended the National Academy could use the FBI as a starting point.

B. The Immigration and Naturalization Service

Two categories of aliens come to the United States: those who come for permanent residence and those who come for a temporary stay. The former are known as Immigrants or Permanent Resident Aliens and the latter are called nonimmigrants. Classification symbols given to the various kinds of immigrants and nonimmigrants are stamped on their visas and recorded on their arrival cards.

In 1965 the Immigration and Nationality Act was amended and many of the old classification symbols were changed and some new ones were added. The Department of State *Visa Office Bulletin Number 153* dated November 2, 1965,

¹ Formerly known as the National Police Academy.

lists all of the classification symbols used in acquiring United States visas. *Visa Office Bulletin Number 153* is reproduced on pages 230-234.

1. The Nonimmigrant Process

When a citizen of a foreign country desires to come to the United States for other than permanent residence, his first step is a visit to the nearest United States Consular Post. He fills out an Application for Non-Immigrant Visa and Alien Registration (State Department Form FS-257), a copy of which is reproduced on page 235.

If everything is in order, a visa is stamped in the passport and the application remains at the Consular Post. If the visa is refused, the reason for the refusal is noted and, if necessary, a lookout notice is made out and submitted for inclusion in the *Visa Office Lookout Book*.

When the non-immigrant is aboard a ship or plane headed for the United States, he fills out Immigration and Naturalization Form 1-94, Arrival and Departure Record. The 1-94, a copy of which is reproduced on page 236, is in duplicate. On arrival at a U.S. port, the non-immigrant gives both copies of the 1-94 to the Immigrant Inspector. The inspector stamps the date and port of arrival, the type of admission, and the extent of stay on the lower right hand corner of the form and gives the original of the 1-94 to the new arrival. The copy is sent for micro-filming and when that has been accomplished, the copy is sent to the non-immigrant index in Washington where it is filed by Soundex system and by the country of citizenship. The Soundex code is marked in the upper right hand corner.

The original of the 1-94 is stapled to the passport of the nonimmigrant and usually remains there until he departs the United States. On departure, the holder surrenders the original to the Immigrant Inspector or designated airline representative and the facts of departure are recorded on the reverse side of the original. This is then microfilmed and sent to the nonimmigrant index in Washington where it is matched up with the copy and put in the master index. The microfilm record of the 1-94's of all people arriving or departing on a particular airplane or ship constitutes the manifest of that plane or vessel.

If a nonimmigrant came to the U.S. for routine purposes and made no effort to extend his stay or apply for some other change, the 1-94 would be the only information on file concerning him. If he changes his plans, applies for an extension of stay, applies to change his status to that of a permanent resident alien or for any other benefit, a file is created and this is known as his "A" file, actually a numerical file with the prefix "A". An "A" file is also created if the alien's conduct is such that it warrants investigation by the Immigration and Naturalization Service. In some cases of nonimmigrants, such as that of a temporary worker of distinguished merit and ability, a file is created immediately on receipt of a request from a U.S. concern to bring this skilled worker to the United States for a certain period.

Investigators desiring to check the record of arrival and/or departure of a nonimmigrant must furnish as much information as possible, particularly his or her full name, citizenship and date of birth. Initials of the first name are insufficient since the Soundex code is programmed for a full first name. If a middle name or initial is known, it should always be included in the request.

When a complete 1-94 is put in the master index, it is filed together with any other arrivals and departures of the same person. An investigator looking for a record of one arrival and/or departure may sometimes come up with five or six arrivals and departures of the same individual.

2. Change of Status from Nonimmigrant to Permanent Resident Alien

Aliens who come to the United States as nonimmigrants and then wish to become permanent residents of this country must execute Form I-485, Application for Status as Permanent Resident. This application includes the same information as an application for an immigrant visa that is submitted at a Consular Post. A copy of the I-485 as well as the two page list of instructions are reproduced on pages 238, 239, 240 and 241. The application and supporting documents, fingerprints, photographs, public change letters, etc., contain a vast amount of information on the applicant.

3. The Process of Becoming a Permanent Resident Alien

A person desiring to come to the United States for permanent residence files an application at the nearest consulate or embassy authorized to issue immigrant visas. The application is made on State Department Form FS-510, Application for Immigrant Visas and Alien Registration. This form is similar to Immigration and Naturalization Service Form I-485, Application for Status as a Permanent Resident. It includes space for the name, address and relationship of the person whom the applicant is going to join, and the name of the person or organization sponsoring the applicant's admission. The applicant must also provide copies of his birth certificate; medical records; military record, if any; certificate of good conduct; evidence of ability to support himself on his own resources or promise of employment.

If the immigrant visa is granted, a visa is put in the passport and the appropriate classification symbol is marked on the visa. The applicant makes his travel arrangements and, like the nonimmigrant, fills out a Form 1-94 on board the plane or vessel. On arrival he surrenders his visa application and supporting documents and they are sent to the District Office covering the area where subject will reside. The 1-94 is microfilmed and sent to the Central Office in Washington.

The Central Office will file the 1-94 in the master index. In a few weeks the new permanent resident will receive his Alien Registration Receipt Card.

4. The Master Index

The master index of the Immigration and Naturalization Service contains 40,000,000 documents; the accession rate is 3,000,000 a year. It consists of all persons on whom an "A" file has been opened, including all persons naturalized since September 27, 1906, and those nonimmigrants who have departed from the United States. It is the first step in checking the records and the more information furnished, the easier it is to check the record.

The Immigration and Naturalization Service operates on a decentralized basis in that an alien's file follows him. If Jose Garcia arrives as an immigrant at Miami and states that he is going to live with his cousin in Oakland, California, the file would be transferred to the San Francisco district. If Jose decides to move to Chicago, he so notifies the District Office in San Francisco. The file is sent to Chicago, the Central Office in Washington is notified of the change of location of the file, and that information is recorded in the index. Note, in

the list of classification symbols used in issuing United States visas, that the symbol "D" is used for a Crewman (seaman or airman). The Immigration and Naturalization Service has a separate control for crewmen and deserters, and the Central Office has a permanent record card of all crewmen. Full data concerning crewmen are recorded on Form 1-174 which includes a picture.

The Central Office files include microfilm records of all people who were naturalized from September 27, 1906, to March 31, 1956. This is a numerical file and if one knows the number of the Certificate of Naturalization, the naturalization record can be reconstituted from the microfilm. If the number is not known, the master index can be consulted, the information obtained, and the record can be reconstituted.

The records of persons who have been naturalized since April 1, 1956, will be in the subject's "A" file. The master index will identify the office where the file is located.

5. Foreign Address and Occupation Index

Another index in the Central Office of the Immigration and Naturalization Service is an extremely valuable source of leads on people who might know your subject: the Foreign Address and Occupation Index (FAOI). All people with very few exceptions who have been naturalized since 1957 or have been issued an immigrant visa since 1957 have been required to fill out a special form (Form G-153) which is filed in the FAOI. The persons filling out the G-153 are requested to follow the following instructions:

- a. Show any addresses outside the U.S. where you have lived for more than one year since January 1940.
- b. State your principal occupation outside the U.S.
- c. Show the name, place and years of membership in any Guild or Union since January 1940.
- d. Show the month, day and year that you were born.
- e. Show the city or town or country in which you were born.
- f. Print your house number and street and the city or town, and state in which you now reside.

The Alien Registration Number (A#) is also recorded on the G-153. The cards are then filed in a geographical file by country and then by city, or village. Some of the larger cities are broken down into political subdivisions similar to our wards or districts. The cards are then filed by occupation in each of the cities. If the person lived in more than one foreign country, duplicate cards are filed covering his residence in a second or third country.

Now let's take a practical case, the case of Wilhelm Strasser who received an immigrant visa at Munich, Germany, in August 1962 and arrived in the U.S. on September 1, 1962. Strasser was born in Berlin in 1930. On the FAOI card he stated that he had resided at 47 Zimmer Street, Munich, from 1959 to 1962; at 11 Rue D'Assai, Casablanca, Morocco, from 1957 to 1959; and at 2 Via XII Gennaio in Palermo, Sicily, from 1949 to 1957. He listed his occupation as toolmaker.

The first step in attempting to find people in the U.S. who know Strasser would be to check FAOI for all toolmakers who formerly resided in Munich, Casablanca or Palermo during the period Strasser resided in one of those cities. From their FAOI cards you would know their location as of the time they filled out the card and, if necessary, a check can be made of the master index to ascertain the location of their "A" file.

The second step would be the address check in FAOI to see if any persons in the U.S. resided in the vicinity of any of Strasser's addresses in Munich, Casablanca or Palermo. If one or more cards are found, the same procedure can be used to find their most recent address in the United States. In certain instances, occupations that are in an allied field can also be checked; e.g., if your subject lists himself as a bus boy, you might desire to check waiters, waitresses, bartenders, restaurant managers, etc. The cross section of occupations represented in this index is absolutely amazing. The writer has scanned the index covering selected cities and noted that, even for small towns, a few from every type of occupation in the town make their way to the U.S.

An additional aid to the investigator is the section on guild or union membership. If you find several cards on people who were members of the same union in the town where your subject resided, your chances are better for scoring a "hit" when you locate and interview those persons.

Any investigator who has a case on an alien who received an immigrant visa after 1957 or has been naturalized since 1957, and desires to interview someone who knew the subject in the old country would do well to check the FAOI. This index can also be of value if one has an inquiry on a nonimmigrant and knows his occupation and the city or cities where he resided abroad. For example, if you have an inquiry on a newspaperman who is in this country as a representative of a foreign newspaper, you could check FAOI and locate other newspapermen from the same city, and there is some chance that you might locate somebody who formerly worked for the same paper.

6. Lookout Book

The Immigration and Naturalization Service maintains a *Lookout Book* listing those individuals whose admission to the U.S. is open to question. The *Lookout Book* is a quick reference source as to where additional information can be obtained on a subject. The *Lookout Book* names are filed in the Soundex File System and contain the following entries: last name; Soundex code; first name, middle initial; date of birth; nationality code (each nationality has a number and the key to the number is in the front of the *Lookout Book*); the File Control Office System (FCOS), which lists where the file is located; case code (type of case); passport or crewman's document number; file number and expiration date.

Names are entered in the *Lookout Book* when Lookout Notice Worksheets (Form G-143) are executed. The justification for entering a name must be set forth and approved by higher authority. Other federal agencies request the Immigration and Naturalization Service to include subjects of interest in the *Lookout Book*.

In the event that it is necessary for the Immigration and Naturalization Service to locate or apprehend an alien who is illegally in the United States, Form 1-213, Record of Illegal Alien Apprehended or Located is filled out. This form contains considerable information about the alien and a copy is reproduced here on page 244.

7. Address Reporting

All aliens in the United States are required to report their address to the Immigration and Naturalization Service during the month of January. This information can be of help to a federal investigator who is trying to obtain present or past address information on a subject.

APPENDIX

The Soundex File system is used by a number of Federal agencies including the Social Security Administration and the Immigration and Naturalization Service, and by many private companies. Federal investigators need to be aware of how this filing system works. Following is the Remington Rand official explanation of the Soundex File system.

HOW TO FIND A NAME IN YOUR SOUNDEX® FILE

All "name" records originate from handwriting or speech. When filed alphabetically, names are arranged in sequence according to exact spelling; therefore dependent upon the accurate interpretation of the spoken or handwritten name. Conversely, when filed the SOUNDEX way, varied spellings of the same name or misinterpretations of the handwriting of a name are brought together in ONE file location. The SOUNDEX coding system reduces name filing to the use of ONE

alphabetic letter and a three digit code number.

With SOUNDEX the first letter of a surname or company name is NOT coded. The names are arranged alphabetically in 26 letter sections; B for Bayer; H for Harrison; S for Schneider. Within each of the 26 letter sections, SOUNDEX filing employs only six groups of consonant letters. Each of the six groups has a code number used for filing. The code number applies to each letter in its group.

SOUNDEX CODE

GROUP LETTERS AND EQUIVALENTS	CODE NUMBER
b f p v	1
c g j k q s x z	2
d t	3
l	4
m n	5
r	6

The vowels a, e, i, o, u and 3 consonants h, w, y have no number equivalent and are not coded. Zero (0) is used to express no consonants following first letter.

Example: Day D 000, Shaw S 000 or to complete a 3 digit code number.

Bird, Burd, Berd, Byrd
Bone, Bohn, Boehne, Boon, Bohon, Bown
Dotson, Dodson, Detsen, Dudson, Dadson
Hogg, Hoge, Hoag, Haag, Haug, Hooge, Hogue
Marshall, Marchall, Marschall, Merschall
Rex, Reks, Riecks, Ricks
Rhoad, Road, Roed, Rhode, Rohde,
Rowd, Rood, Rude, Roat, Root
Siegel, Seagle, Segal, Sigal,
Seigall, Siegle, Siegal
Schonnenschein, Sonenschein, Sonenschein
Sonnenschien

"B" File section Guide 630
"B" File section Guide 500
"D" File section Guide 325
"H" File section Guide 200
"M" File section Guide 624
"R" File section Guide 200
"R" File section Guide 300

"S" File section Guide 240

"S" File section Guide 552

FIVE SIMPLE RULES FOR CODING

Rule No. 1—To code a name use three digits. When no consonants or insufficient code consonants appear in a surname or organization name, add one, two or three zeros to give a three digit code.

Darlington is coded D645 (3 consonants only). Goodyear is coded G360 (add 1 zero). Levy is coded L100 (add 2 zeros). Touhey is coded T000 (no coded consonants add 3 zeros).

Rule No. 2—Two letters together (double letters) are considered as one letter (single letter).

Abbott is coded A130. Farrell is coded F640. Kelly is coded K400. Mann is coded M300.

Rule No. 3—Consider any combination of two or more equivalent letters TOGETHER as having the same number as a single letter.

Biggs is coded B200. Jackson is coded J250. McCarthy is coded M263. Opfler is coded O160.

Rule No. 4—When the first (initial) letter is immediately followed by the same letter or one or more of its equivalent letters (no separators) with the same code number the letters are considered one first letter and not coded.

Czeray is coded C650. Uewellyn is coded L450. Scott is coded S300. Sessathal is coded S324.

Rule No. 5—Vowels a, e, i, o, u and the consonant y are separators. Consonants having a code number when separated by vowels or y are coded individually. h and w (not separators) are not coded and are considered as non-existent in the name when coding.

Ferrara is coded F660. Kozasick is coded K222. Lyles is coded L420. McClelland is coded M244. Ashcroft is coded A261. Bowkett is coded B210. Greenwood is coded G633. Linwright is coded L162.

ONE RULE FOR FILING

The records are sorted and filed alphabetically by the first letter. After coding the names, the records are sorted and filed in numeric sequence 000 to 666 for each of the 26 letters of the alphabet. The records are

then arranged alphabetically between two numeric guides, by first name initial; or first name; or first name and middle initial; or the second unit of an organization name.

Remington Rand

DIVISION OF SPERRY RAND CORPORATION

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the _____ day of _____, 197____ (deponent served the within _____ Appendix _____ upon: _____)

Allen W. Snader, Esq.

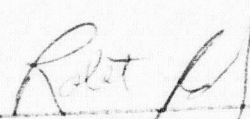
attorney(s) for

deponent

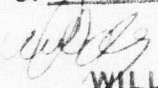
in this action, at

Dept. of Justice, Federal Plaza, New York, N.Y.

the address(es) designated by said attorney(s) for that purpose by depositing ¹/₃ true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


Robert Bailey

Sworn to before me, this _____
day of _____ July, 197____


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1970